

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

| | | |
|-------------------------|---|---|
| SECURITIES AND EXCHANGE |) | |
| COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 3:08-cv-02050 (SAF) |
| |) | |
| MARK CUBAN, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

REPLY IN SUPPORT OF MOTION FOR CONTINUANCE

Defendant Mark Cuban hereby submits this Reply in support of his Motion for Continuance (“Motion”) (ECF. No. 179). In its Opposition to Mr. Cuban’s request for a brief continuance of the trial setting, the SEC does not identify any actual prejudice that would result from the Court granting the Motion. Accordingly, Mr. Cuban respectfully requests that the Court reset both the trial of this case and all unexpired deadlines based on the current trial date.

In its Opposition (ECF No. 181), the SEC raises a handful of unpersuasive objections. First, the SEC suggests that Mr. Cuban waited too long to file the Motion. The SEC does not explain, however, why waiting for the resolution of a potentially dispositive motion (Mr. Cuban’s Motion for Summary Judgment, ECF No. 145) constitutes inexcusable delay. Even more importantly, the SEC does not articulate how it would be prejudiced by moving the trial at this point.

Second, the SEC claims that witnesses are unavailable in the last two weeks of August 2013. The SEC declines to specify *which* witnesses are unavailable, and, in any event, Mr. Cuban also proposed the weeks starting August 12, 2013 and September 2, 2013 as possible new

trial dates (which the SEC does not address). This objection therefore provides no basis upon which to reject the Motion.

Third, the SEC characterizes Mr. Melsheimer's role in this case to date as "minor." The relevant issue, however, is Mr. Melsheimer's role at trial and the SEC does not (because it cannot) dispute that Mr. Melsheimer is a core member of Mr. Cuban's *trial* team. Accordingly, Mr. Melsheimer's conflicts are highly relevant.

Finally, the SEC attempts to minimize the importance of Mr. Cuban's contractual business conflict by using the dismissive term "Hollywood production schedule." ECF No. 181 at 2 n.1. The SEC does not dispute, however, that Mr. Cuban is subject to bona fide contractual commitments, nor does it offer any argument as to why these commitments should not counsel in favor of moving the trial date. Given that the Court's November 9, 2012 Order resetting trial to June 17, 2013, invited the parties to alert the court to planned vacations, and not just conflicts with other cases, accommodating Mr. Cuban's business and contractual commitments is entirely within the spirit of that Order. *See* ECF No. 168 at 1.

Because the SEC has declined to articulate any prejudice it would suffer from the relief sought or to identify any specific conflicts, Mr. Cuban's Motion should be granted.

Dated: March 19, 2013
Washington, D.C.

Respectfully submitted,

By: s/ Lyle Roberts
Lyle Roberts (*pro hac vice*)
D.C. Bar No. 464789
George E. Anhang (*pro hac vice*)
D.C. Bar. No 461936
COOLEY LLP
1299 Pennsylvania Ave NW, Suite 700
Washington, D.C. 20004
Tel. (202) 842-7855
Fax (202) 842-7899

lroberts@cooley.com
ganhang@cooley.com

Stephen A. Best
D.C. Bar No. 428447
Brian D. Nysenbaum (*pro hac vice*)
BROWNSTEIN HYATT FARBER
SCHRECK LLP
1350 I Street NW, Suite 510
Washington, D.C. 20005
Tel. (202) 747-0500
Fax (202) 296-7009
sbest@bhfs.com
bnysenbaum@bhfs.com

Leslie A. Maria (*pro hac vice*)
D.C. Bar No. 484806
SCHIFF HARDIN LLP
901 K St., NW
Washington, D.C. 20001
Tel. (202) 778-6419
Fax (202) 778-6460
lmaria@schiffhardin.com

Christopher J. Clark (*pro hac vice*)
LATHAM & WATKINS LLP
885 Third Avenue
New York, New York 10022
Tel. (212) 906-1200
Fax (212) 751-4864
christopher.clark2@lw.com

Thomas M. Melsheimer
Texas Bar No. 13922550
Steven H. Stodghill
Texas Bar No. 19261100
FISH & RICHARDSON P.C.
1717 Main Street, Suite 5000
Dallas, Texas 75201
Tel. (214) 747-5070
Fax (214) 747-2091
melsheimer@fr.com
stodghill@fr.com

Attorneys for Defendant Mark Cuban

CERTIFICATE OF SERVICE

I certify that on March 19, 2013 I electronically submitted the Reply in Support of Motion for Continuance with the clerk of court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically.

s/ Lyle Roberts _____

Lyle Roberts